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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-fifth session

SUMMARY RECORD OF THE 9th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 27 April 2001, at 10 a.m.

Chairperson: Mrs. BONOAN-DANDAN

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Initial report of China: Hong Kong Special Administrative Region (E/1990/5/Add.43; E/C.12/Q/HKSAR/1; written replies to the list of issues prepared by the Government of China: Hong Kong Special Administrative Region (document without a reference number; HRI/CORE/1/Add.21/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of China: Hong Kong Special Administrative Region took places at the Committee table.

2. The CHAIRPERSON welcomed the recent ratification by China of the International Covenant on Economic, Social and Cultural Rights.

3. Mr. QIAO Zonghuai (China) said that in accordance with the stipulations of the Sino-British Joint Declaration on the Question of Hong Kong and the Basic Law of the Hong Kong Special Administrative Region (HKSAR) of China, the relevant provisions of the Covenant, which had been applicable to the HKSAR previously, had remained in force after 1 July 1997 and were implemented through the law of the Special Administrative Region.

4. China had ratified the Covenant on 28 February 2001, and it would enter into force on 27 June 2001. The ratification demonstrated China's serious commitment to the promotion and protection of human rights. Although it was not yet a party to the Covenant, in order to give effect to the principle of "one country, two systems" the Chinese Government had, through its permanent mission in Geneva, submitted to the Committee in 1999, the initial report prepared by the HKSAR on the implementation of the Covenant in Hong Kong so that the treaty bodies and the international community could acquire a better understanding of the human rights situation. Speaking as permanent representative of China to the United Nations Office at Geneva he wished the Committee success in its consideration of the HKSAR report, which he invited the head of the delegation to introduce.

5. Mr. LAM (China: Hong Kong Special Administrative Region), said that in 1996, when the delegation had last appeared before the Committee, many local and international observers had harboured anxieties about the prospect of the impending reunification of Hong Kong with China and its continuing obligation to submit reports to the Committee and the Human Rights Committee following the change of sovereignty. Any doubts in that regard should have subsequently been dispelled. Since 1996 the Hong Kong Special Administrative Region had weathered the storm of the Asian economic crisis. Although it had not gone unscathed, its unprecedently high unemployment levels had fallen from 6.3 per cent in mid-1999 to 4.6 per cent in the first quarter of 2001. A 10.5 per cent increase in real terms in GDP had also been recorded in 2000. Although Hong Kong's economic prosperity was well known to

all, and was due to strong local and international investment as well as to the determination of its people to build ever better lives for themselves and their families, poverty had not been fully eradicated. Indeed, the problem of low incomes was still endemic in some sectors of the community.

6. The Government had endeavoured to allow all citizens to benefit from economic growth and the poorer members of the community to raise themselves from poverty. That had been done through the provision of education and training and facilitation of the operation of free-market forces which had generated jobs and wealth for the population over the previous 50 years.

7. Although the reasons for poverty were complex, a central factor contributing to low incomes for certain sectors had been the inability of members of the community with little education or vocational training to fit into the continuous process of economic restructuring. With the development of knowledge-based industries, jobs for unskilled and semi-skilled workers were giving way to highly skilled and thus more costly professions. In addition, many employers had cut jobs to save costs during the Asian economic crisis, in particular for marginal labour. The rise in unemployment and underemployment had exacerbated the problems of poverty and low income. Job opportunities were, however, expected to improve with economic recovery

8. The Government had resolved to tackle the issue of poverty at its roots. In a policy address in October 2000 the Chief Executive had emphasized that education policy was at the very core of Hong Kong's social policy and that the most important long-term social investment was in education. Total expenditure in that area currently amounted to 4.25 per cent of GDP, an increase of 43 per cent over the pre-unification level. Additional subsidized school places would be provided to enable more young people to complete full secondary education and professional diploma and sub-degree courses would be expanded over the next 10 years to enable 60 per cent of senior secondary school leavers to receive tertiary education. It was also the Government's belief that the low-skilled workers and unemployed, who might have received little education, would benefit from some degree of formal instruction. Secondary education would therefore be provided for those already in the labour force, who would also receive focused training to enable them to upgrade their skills.

9. At the same time, the Government had sought to provide additional employment opportunities through public investment, without compromising the principle of market economics. More was being invested in services for patients, single-parent families, the elderly, the infirm and disabled, which would help to expand the labour market in the service sector. Investment would also be accelerated in worthwhile infrastructure projects such as those relating to the environment. In general terms, however, it was clear that only employment opportunities created by sustained economic growth would endure.

10. The Hong Kong Government recognized that the problems of poverty and low income needed also to be addressed in more immediate ways. Direct assistance was provided through the Comprehensive Social Security Assistance (CSSA) Scheme, and the housing, health care, welfare, education and rehabilitation programmes also provided social wages for the economically disadvantaged.

11. With reference to the Committee's statement on "Globalization and Economic, Social and Cultural Rights", published in May 1998, Hong Kong had long been a globalized economic entity whose life blood had been international trade. It was within that context that social and economic policies had been developed and there was no question of their being compromised in the interests of international trading conditions.

12. In its General Comments, the Committee had emphasized the importance of the progressive implementation of the Covenant. Since parties were therefore presumably expected to demonstrate in the reporting procedure the progress they had made towards that end, it was important to underline a number of areas in which advances had been made since the delegation had last appeared before the Committee. Firstly, with regard to article 3 of the Covenant, a Women's Commission had been established to work out a long-term strategy for the development and advancement of women, to advise the Government on policies and initiatives that concerned women, and to enable women to realize fully their due status, rights and opportunities.

13. As to article 11 (1) of the Covenant, it was pleasing to note that the number of households with inadequate accommodation had fallen from 10.3 per cent in 1995 to 6.3 per cent in 2000. All families currently living in temporary housing areas, cottage areas and squatter areas would be moved to public rental housing or Home Ownership estates by the end of 2001. Further, the average waiting time for public rental housing had nearly halved in the previous decade. Two pledges had also been made to improve housing for elderly people: those who had applied before March 2001 would be rehoused before the end of 2003, and the average waiting time for elderly single persons seeking public rental housing would be reduced to two years by 2005. Finally, a wide range of measures, at a cost of HK$ 500 million, had been taken to help new immigrants from mainland China to integrate and adapt to life in Hong Kong.

14. In regard to reservations and declarations under the Covenant, certain changes would be taking effect as of 27 June 2001. The declaration in respect of article 1 and the reservation to article 7 concerning equal pay for men and women for equal work in the private sector would cease to apply. The former reservation to article 8 concerning the right of trade unions to form federations within the HKSAR and to affiliate with workers', employers' and professional organizations in foreign countries would be replaced by an interpretative declaration. The reservation to article 6 would, however, continue to apply in order to provide the Government with flexibility in formulating measures to protect the interests and employment opportunities of workers.

15. The HKSAR wished to reiterate its firm commitment to progressively achieving full realization of the rights enshrined in the Covenant. Although it had not yet implemented all the Committee's recommendations, he believed that significant improvements had been made since the previous report.

16. Mr. RIEDEL welcomed the decision to withdraw the reservations to articles 1 and 7 of the Covenant. With regard to article 8, however, it would have been preferable to withdraw the reservation rather than introduce an interpretative declaration which, although possible under international law, reserved the right to an alternative interpretation of a treaty obligation while acknowledging that a different interpretation existed in the international context. Article 6 of the

Covenant had been drafted so that the 145 States parties thereto could carry out their obligations, without expressing any reservation in regard to fundamental human rights. The reservation to article 6 should be withdrawn since the flexibility argument would, if applied generally to all States, negate the fundamental aim of the Covenant provisions.

17. Mr. SADI emphasized that the "one country, two systems" principle, unique and complex as it was, could easily lead to an uneasy relationship between two systems that appeared diametrically opposed in economic terms. For example, the perspective on poverty and unemployment in Hong Kong would differ widely from that prevailing in mainland China, since it was conditioned by market forces. What was the delegation's assessment on a scale from 1 to 10, of how well the relationship was working, what problems had been encountered, and what were the prospects for the future?

18. Mr. AHMED said that many positive phenomena were to be observed in Hong Kong, for example the fact that its financial reserve of US$ 20 billion had doubled since 1997. The success of the HKSAR was important to China and indeed the whole world. Although he did not wish to detract from what had been achieved, he stressed, in a spirit of constructive criticism, that if complete success was to be attained it was time for the HKSAR to move away from policies designed to produce economic prosperity towards the development of a more socially equitable society. That would enable the country to be viewed in a more positive light on an international level and as a humane society rather than one governed by the rules of economics. Greater attention should be paid to the issue of discrimination against women and foreign workers, the disabled, homosexuals and the mentally ill. Of particular importance was the problem of family reunification, epitomized by the 200,000 children in China whose parents lived in Hong Kong. They should be treated in a more humane manner and be reunited, if only on a gradual basis, with their parents.

19. Perhaps equally significant was the more general problem of housing. The existence of squats and slums was incongruous in the context of overall economic prosperity. Likewise, the problems of older persons, who were often destitute, should be dealt with as a matter of urgency within the overall transition towards greater social equality.

20. Mr. WIMER ZAMBRANO expressed admiration for the power and economic dynamism of the HKSAR as well as its cosmopolitan character. However, the large number of different ethnic groups, represented, while coexisting, were often strictly separate. Did the Government have any plans to improve the integration of ethnic groups into the different strata of society?

21. Mr. LAM (China: Hong Kong Special Administrative Region), responding to the question raised by Mr. Sadi, said that it was difficult to assess the success of the "one country, two systems" principle in quantitative terms. Over the past four years, the relationship between the two had been a happy, successful and positive one. That was particularly noteworthy since, up to 1997, considerable anxiety had been expressed that things would change in the HKSAR following reunification. Nevertheless, Hong Kong remained an open, free, dynamic and cosmopolitan society. The Basic Law had been fully implemented and the mainland had not

interfered at all in internal policies and administration. It had also been very cooperative in regard to foreign affairs. The success that had been achieved by the HKSAR could be seen most clearly by Committee members if they were to visit the island, where evidence of the degree of autonomy was readily apparent.

22. In answer to Mr. Ahmed, he said that the HKSAR still had weaknesses but that the proposed transition from an essentially economic framework to a more socially equitable structure had already begun. That applied particularly to housing, since half of the population lived in subsidized accommodation. Problems in relation to cage homes and squats did still exist, but it had become possible for an average middle-income family to purchase their own flat with suitable facilities. A further considerable achievement was that working class families could obtain flats only three to four years after applying for them. Similar improvements had been pledged in respect of elderly people who had applied for public housing. He stressed that such problems were being tackled by the use of tax revenues. Notwithstanding, Mr. Ahmed's concern was understandable since, although the HKSAR had a per capita GDP of US$ 23,000, poverty and inadequate housing were still visible and the Government would have to work harder to raise people's living standards.

23. Replying to the question put by Mr. Wimer Zambrano, he said that Hong Kong had long had a substantial non-Chinese ethnic community. The authorities had chosen not to plan specific integration measures on the grounds that Hong Kong was a very free and uninhibited society. However, there were many schemes to assist and provide facilities for low-income immigrant groups in particular, thereby helping them integrate into the local population.

24. Mr. ALLCOCK (China: Hong Kong Special Administrative Region), replying to the observations of Mr. Riedel, explained that the first part of the interpretative provision entered by the Chinese Government in relation to article 8 of the Covenant stated that the right of trade unions to establish national federations or confederations should be interpreted as referring to the HKSAR in order to reflect the fact that Hong Kong was not a nation but part of a larger entity. He did not believe that the provision materially restricted the right. The second part stated that the right of federations or confederations to form or join international trade union organizations did not imply the right to form or join political organizations established outside the HKSAR. The right to join legitimate trade union organizations was certainly guaranteed.

25. With regard to article 6 of the Covenant, a reservation permitting the formulation of employment restrictions in respect of place of birth or residential qualifications had been retained by the Chinese Government. People from outside were permitted to enter Hong Kong for specific employment, but in certain cases restrictions were placed on the possibility of their changing employment or employer in order to protect employment opportunities for local workers.

26. The CHAIRPERSON invited members to comment on items 1 to 3 of the list of issues.

27. Mr. PILLAY said it was not clear to him whether all the rights enshrined in the Covenant were justiciable or merely regarded as statements of intent. As pointed out in paragraph 53 of the core document, under Hong Kong's dual system an international treaty was not self-executing but had to be incorporated by specific legislation. Why had that been done for the

Covenant on Civil and Political Rights but not for the Covenant on Economic, Social and Cultural Rights? In particular, was there specific legislation incorporating the provision against discrimination? He understood there was no such legislation in the private sector. The General Comments of the Committee had made it abundantly clear that all rights enshrined in the Covenant were justiciable and some, including the right to freedom from discrimination on grounds of race and status, must be applied immediately.

28. Mr. MALINVERNI drew attention to paragraph 3 of the initial report (document E/1990/5/Add.43) which invoked article 2, paragraph 1 of the Covenant to justify its non-incorporation into domestic legislation. As Mr. Pillay had pointed out, some of the provisions were directly applicable, which implied that the Covenant had to be incorporated into domestic law, so the explanation in the report was not entirely satisfactory.

29. According to the reply given to question 1 on the list of issues, in the event of more than one possible interpretation of the domestic law, preference should be given to the law which was compatible with international law. But what happened when no possible interpretation under internal law conformed with international law? To which was preference given?

30. Mr. TEXIER observed that China's ratification of the Covenant, which he welcomed, had eliminated a particular legal problem for the Committee. Noting that the reservations made to several articles under the British administration had been reduced to one, on article 8, under the Chinese administration, he asked what the delegation expected of ratification by China.

31. Turning to the jurisprudential aspect of the incorporation of the Covenant into domestic law, he said he had been surprised at a court ruling cited in the written replies according to which the international instruments invoked by the applicants (the two Covenants and the Convention on the Rights of the Child) did not oblige the Government to give right of permanent residence to a child adopted outside the territory by a permanent resident. Did the delegation believe that current immigration laws were sufficient guarantee of the right to family life recognized by the two Covenants and other international instruments?

32. Mr. RIEDEL welcomed the HKSAR report's extensive treatment of the Committee's previous concluding observations. He was not convinced, however, by the argument that there was no immediate need for a human rights commission as the rule of law was fully assured by Hong Kong's constitutional arrangements. Within the United Nations system and according to the Paris Principles, a national human rights commission was considered a desideratum. Presumably, an appeal from the Hong Kong Court of Final Appeal would currently lie with the Standing Committee of the National People's Congress in Beijing, making it an administrative or executive matter, and the rule of law, which was fully guaranteed within Hong Kong, might thus be bypassed. If that assessment were correct, would it not be expedient and help promote public awareness to have a human rights commission dealing specifically with the provisions of human rights treaties to which Hong Kong was party?

33. Mr. THAPALIA also wanted to know, against the background of repeated allegations of discrimination of all kinds and in the light of the concerns expressed by the Committee in the past, why there was no relevant law or competent monitoring body. Could the delegation outline the measures being taken or envisaged by the authorities to eliminate discrimination de jure and de facto and say what progress had been achieved in the previous five years?

34. Mr. SADI observed that the status of the Covenant appeared still to be in doubt. Referring to the obligation laid on the authorities by article 23 of the Basic Law to enact legislation on sedition and subversion which could conceivably touch on trade union and academic freedoms, he asked, if such legislation was in conflict with the Covenant, which text would enjoy supremacy. Secondly, could the delegation be as reassuring about the status of the views of the Committee as they had been regarding the relevance and effectiveness of the Covenant itself?

35. Mr. HUNT commended the authorities and civil society in Hong Kong on the seriousness with which they had approached the reporting process, which had been greatly enhanced as a consequence. Further to the argument advanced by Mr. Riedel, he considered that a comprehensive human rights institution was especially important for economic, social and cultural rights as they were not as well known or understood as civil and political rights. That was true of most jurisdictions. In the absence of such an institution, what were the authorities doing to promote better awareness and understanding?

36. The judge in two recent cases, Justice Cheung, had referred to the Covenant as "promotional in nature", which did not correspond to the Committee's understanding of its status. With an independent judiciary, the authorities were clearly not responsible for the judge's statement. But, had the authorities, being parties to both cases, argued in court that the Covenant was purely promotional?

37. Mr. CEAUSU said he understood that under the terms of the Sino-British Joint Declaration Hong Kong's social and economic systems were to remain unchanged for 50 years. But if China had already ratified more international instruments in the field of human rights, for example, on discrimination, than those ratified by the British authorities on the territory's behalf, surely it was time steps were taken to apply any such legislation mutatis mutandis to the HKSAR.

38. Mr. GRISSA asked whether, now that China had ratified the Covenant, Hong Kong would continue to report separately.

39. Mr. LAM (China: Hong Kong Special Administrative Region), responding to questions from Committee members regarding the Covenant's place in Hong Kong's domestic legislation, said that the Hong Kong Government saw its obligations under the Covenant as an essential duty. It had many times pledged openly that it would take steps, to the maximum of its available resources, with a view to progressively achieving the full realization of the rights recognized in the Covenant, and it would continue to strive towards that end.

40. In answer to Committee members' concerns about the lack of a national human rights institution, he said that Hong Kong had such a tight network of legal institutions, as well as a large number of sophisticated NGOs, that there was little room for the Government to abuse rights explicitly. It might have erred unwittingly, but the Bill of Rights and the Basic Law made it clear that the authorities must abide by those legal requirements and principles. He believed Hong Kong had a good record: the Government's own cases had on occasion been thrown out by its own courts. The point had often been made that taking that last step of establishing a national human rights institution would be a great achievement for Hong Kong; the Government would continue to listen to such views and to those of Committee members, particularly when particular weaknesses were pointed out.

41. In answer to Mr. Texier's first question, he said that, since Hong Kong had been a party to the Covenant for some time and its obligations under the Covenant were spelled out in the Basic Law, constitutionally and legally speaking China's ratification of the Covenant would have no effect on Hong Kong's own obligations.

42. On the possibility of extending some of China's legislation to the HKSAR, he said that, under the "one country, two systems" principle, Hong Kong's legislation was primarily its own business and only in certain areas, such as defence, that fell outside the limits of its autonomy, was extension of China's legislation possible.

43. Referring to Mr. Sadi's question concerning article 23 of the Basic Law, he said that the Human Rights Unit of the Department of Justice vetted all proposed legislation and policy to ensure its compatibility with Hong Kong's international treaty obligations and its advice was taken seriously.

44. Mr. ALLCOCK (China: Hong Kong Special Administrative Region), responding to a question from Mr. Hunt regarding the domestic application of the Covenant, said that the Government, following the Committee's General Comment No. 9, accepted that there was no Covenant right that could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions and also that some Covenant rights were immediately applicable. The question was how those rights should be incorporated into domestic law. According to General Comment No. 9, the precise method was a matter for each State party, but there would have to be a strong justification for using a method that differed significantly from those used in relation to other human rights treaties.

45. Hong Kong had brought the provisions of the International Covenant on Civil and Political Rights into its domestic law by various constitutional and legal methods, but not by direct incorporation of the Covenant. The Government's position was that, although the International Covenant on Economic, Social and Cultural Rights was not an identical case, it was similar, and some of the rights in the Covenant were constitutionally guaranteed under the Basic Law, while there existed some 100 ordinances protecting Covenant rights in law, as shown in annex 3 to the initial report.

46. In response to the question by Mr. Malinverni, he said that new (i.e. post-reunification) legislation could be challenged in the courts under the Basic Law, article 39, if it appeared to be inconsistent with the Covenant.

47. In response to Mr. Texier's question on the Government's reply to item 1 in the list of issues, he said that the question of whether Hong Kong's immigration law recognized the Covenant rights, in particular the right to family life, was complicated by the fact that Hong Kong had entered reservations to the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, which meant that the law could not be challenged on the grounds of inconsistency with those instruments. However, it had entered no such reservation to the Covenant on Economic, Social and Cultural Rights, which meant that arguments were still taking place in the courts on the questions of whether immigration law could be challenged on the grounds that it violated the right to family life, how far government officials must take Covenant rights into account when making administrative decisions, and to what extent a member of the public had a legitimate expectation that they would in fact be taken into account.

48. Referring to Mr. Riedel's question, he said there was no right of appeal to the Standing Committee of the National People's Congress in the sense of an application for a change in a judgment in a specific case as it affected the parties. The Standing Committee had the power to interpret national law, and did so very exceptionally, but that interpretation would not affect the judgment in a previously decided case as far as the parties were concerned.

49. In answer to Mr. Hunt's question about whether the Government had argued in court that the Covenant was "promotional in nature", he said that there were various views on the matter but he could not say precisely what argument had been put by the Government.

50. Mr. LAM (China: Hong Kong Special Administrative Region), replying to the question from Mr. Grissa, said that Hong Kong would continue to be the subject of a separate report to the Committee, but that that report would be submitted at the same time as China's own report.

51. Mr. PILLAY said he was glad to hear that the Human Rights Unit vetted proposed legislation for compatibility with the Covenant, but what of legislation that ought to be but was not enacted? The Covenant's provisions on discrimination, for example, were susceptible of immediate implementation, so why had no legislation been enacted against discrimination on grounds of race or of sexual orientation? Paragraph 13 of the report referred to studies that had found that more than 80 per cent of people were opposed to anti-discrimination legislation but that all of them supported the use of educational means to address the issues. Why not use those educational means to inform people of Hong Kong's obligations?

52. Mr. HUNT noted that there were cases currently before the courts in which it was being argued that the Covenant aroused legitimate expectations that should be taken into account in the exercise of discretionary powers. Referring to Australian and New Zealand case law on legitimate expectation, he asked what the Authority's legal position was on the matter. Did it take the view that the Covenant gave rise to legitimate expectation for those within its jurisdiction?

53. Following up a previous question, he asked who had responsibility for promoting awareness of human rights in the absence of a national human rights commission.

54. Mr. LAM (China: Hong Kong Special Administrative Region) said it was up to the relevant authorities to promote rights such as the right to health or to education. It was they who had to formulate and champion improvements in social policy. Economic, social and cultural rights, specifically, were publicized by the Home Affairs Bureau through, for example, television messages, posters and booklets.

55. Mr. ALLCOCK (China: Hong Kong Special Administrative Region) said that the only cases to raise the question of legitimate expectation to date had concerned the right to family life and often related to the enforcement of immigration law in the case of illegal overstayers. Generally speaking, an international obligation was one the Government had undertaken at international level, but the accepted common-law position was that such obligations were binding only to the extent that they had been incorporated into domestic law. The argument that people had a legitimate expectation that all Covenant rights would be immediately implemented by the Government tended to blur the distinction between the international and domestic arenas. The Government was therefore arguing in such cases that there was no legitimate expectation that Covenant rights would be taken into account when decisions were made.

56. Mr. PILLAY said the delegation appeared to be trying to evade the issue by arguing that there was no legitimate expectation that Covenant rights would be applied if there was no domestic law specifically incorporating those rights. That argument itself implied that domestic law had not incorporated all the Covenant rights, which was the very point he had been trying to make: were all the Covenant rights incorporated by constitutional, legislative or administrative means into domestic law?

57. Mr. ALLCOCK (China: Hong Kong Special Administrative Region) said the discussion related specifically to immigration law, which was one area where it was accepted that the right to family life might not be fully protected in Hong Kong law. The problem of split families was a particularly difficult one for Hong Kong. Measures were in place to allow the orderly arrival of people from split families but the community could not cope with the influx if they all arrived at the same time. It was for that very reason that Hong Kong had entered reservations to the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

58. The CHAIRPERSON invited committee members' questions on items 4 to 7 on the list of issues.

59. Mr. MALINVERNI, referring to paragraph 13 of the report, asked for clarification of the status of the surveys that had been conducted on anti-discrimination legislation. How many people had been interviewed, for example? He also wondered whether the legislature should refuse to legislate on such fundamental issues as discrimination merely because it appeared that people did not want it to do so.

60. Mr. CEAUSU said he shared those concerns and believed that decisions by a State party to implement the provisions of the Covenant should not be influenced by the opinion of certain groups who could not claim to represent the majority of the population. When Governments undertook a course of action in fulfilment of international obligations freely entered into they should not be dissuaded by public opinion. The high proportion of anti-legislation submissions

made on pre-printed forms, as mentioned in the reply to item 4 on the list of issues, suggested that pressure from certain sectors of the population had played a significant role and that a campaign had been organized by a particular lobby. Similarly in Romania, for example, the Orthodox Church had vehemently opposed the decriminalization of homosexuality.

61. It would be preferable for the two types of discrimination, based on race and sexual orientation, to be addressed separately. By linking them in the opinion polls, the authorities were creating an additional obstacle and affording an opportunity for stronger opposition to the elimination of racial discrimination.

62. Ms. BARAHONA-RIERA said that the creation of the Women's Commission referred to in the delegation's introduction represented a great leap forward. However, she wondered what degree of financial autonomy it enjoyed and what social and political sectors and nationalities were represented on it. How did it plan to make itself representative of all ethnic groups? What capacity did it have to ensure that its recommendations were incorporated into the Government's various social, economic and cultural plans? Lastly, she wished to know what legal instruments would be at its disposal to recommend amendments to the legislation so as effectively to guarantee the inclusion of a gender perspective in Hong Kong's legal framework.

63. Mr. TEXIER said that while the HKSAR was not a party to the Geneva Convention relating to the Status of Refugees or its 1967 Protocol, that situation would change with China's accession to it. He was concerned about the discrimination inherent in the fact that most persons seeking refugee status in the HKSAR were Vietnamese and that, while their treatment was consistent with the provisions of the Geneva Convention, that was not the case for refugees from other countries. Did the authorities plan to amend the legislation so as to afford the latter the same access to economic, social and cultural rights as Vietnamese refugees?

64. Mr. SADI asked the delegation whether the Court of Final Appeal's unanimous ruling that a child born in China to Hong Kong residents had the right of abode in the HKSAR did not discriminate against those born to residents of other countries.

65. Mr. TEXIER asked at what cost unemployment had been reduced to 6 per cent, a much lower figure than in Latin America and some European countries. Could it be that workers' guarantees were not respected? The Committee had noted in its concluding observations on the report concerning Hong Kong submitted in 1996 that the unemployment rate then prevailing was the result of economic restructuring. Since the economy was presumably still being restructured, he hoped that the unemployment rate was not being kept down through the ad hoc recruitment of untrained workers.

66. He asked what guarantees existed with regard to workers' hours. Information in the Committee's possession suggested that some worked extremely long hours, often as much as 15 hours at a stretch. While article 7 did not stipulate a specific number of working hours, it made it abundantly clear that a reasonable maximum was required. He also wished to know whether the legislation guaranteed workers a minimum wage that allowed them and their families to enjoy a decent standard of living. It was alarming that in an affluent society like Hong Kong a worker could earn a daily wage equivalent to US$ 1 for 14 hours, as recently reported in Hong Kong's South China Morning Post.

67. Lastly, were employers free to dismiss any worker at will? Or was there some monitoring system to ensure that dismissals were justified by consistently poor performance or legitimate economic reasons?

68. Mr. GRISSA asked what rights to social security, to a fair minimum wage and to reasonable working hours were enjoyed by the 217,000 foreign domestic workers in Hong Kong, two thirds of them from the Philippines. What was their actual status? He took exception to the term "imported workers" used in the report, as though such people were manufactured goods. Were they then "re-exported" at the end of their contracts?

69. Mr. RIEDEL cited the written reply to item 12 of the list of issues to the effect that the authorities had held consultations with the Committee on Occupational Safety and Health (COSH) of the tripartite Labour Advisory Board, and that which divergent views had been expressed by the employers' and employees' representatives as to the manner in which rest breaks in the workplace should be regulated. The matter had been deferred for further consideration. However, article 7 (d) of the Covenant explicitly stated that it was an obligation of States parties to provide for adequate working conditions and reasonable working hours. Given their duty to protect, it was incumbent upon States parties to ensure that steps were taken to enact suitable legislation. What was the Government doing to ensure implementation of those provisions?

70. Mr. HUNT pointed out that article 7, subparagraph (a) (i) was equally germane to the issue and asked what the Government was doing to meet its obligation under that article to provide for "fair wages and equal remuneration for work of equal value without distinction of any kind". He had understood that, contrary to the explanation given in section 11 of the written replies, it was not the Equal Opportunities Commission (EOC), but the study submitted to it, that had recommended that equal pay should be promoted through persuasion rather than legislation. It was disturbing that such an important issue as the explicit obligation established in article 7 (a) (i), should be, as the Government claimed, addressed through the Sex Discrimination Ordinance (SDO). What time-frame did the authorities envisage for introducing specific legislation on equal pay for equal work? If no legislation was on the agenda, what was it doing to uphold that right?

71. Mr. PILLAY, referring to article 6, drew attention to the long-standing practice in the HKSAR of excluding relatives of the mentally ill from recruitment to the disciplined forces on the ground that they might be susceptible to a similar condition. Yet, the courts had recently outlawed that practice in a case concerning recruitment to the Fire Services and Customs and Excise Departments. Could the delegation give assurances that such discrimination would be effectively banned?

72. Mr. CEAUSU noted that in its written replies the State party had sought to justify the absence of legislation on the minimum wage on the grounds that Hong Kong had a free-market system and that labour terms should be negotiated directly with the employer and set forth in a contract freely drawn up between employer and employee. The free-market status had also been invoked to explain the absence of legislation concerning working hours. Yet, other free-market

countries had decided to regulate working conditions by legislation in order to keep pace with changing circumstances and had also legislated for considerably reduced working hours. He recommended that the HKSAR should emulate them in both those regards, as was incumbent on all States parties.

73. Mr. TEXIER said that, there being no minimum wage in Hong Kong, it was a fiction to suggest that the employer-employee relationship was one of equality. The only way to avoid the worker being always at a disadvantage when wages were determined was to legislate or to introduce collective bargaining. The same was true of the grounds on which workers could be dismissed. Regarding equal pay for equal work, according to Hong Kong trade union sources, a woman working in the manufacturing sector earned HKS 90 a day - much less than a man in the same job. There, too, a legal framework was called for.

74. Mr. SADI asked whether part-time workers, mainly women, were not hired in order to cut labour costs. He was amazed at the unlimited number of hours worked and the inhuman treatment of workers, who sometimes were not given time off for meals. Such treatment was outdated; he hoped that the authorities would take the necessary action.

75. Ms. BARAHONA-RIERA observed that protection of the right to equal pay for men and women existed only in case law, since there was no legislation on the subject. That being so, what provision could a perceived victim of gender discrimination invoke? She asked whether the Government had any policies regarding discrimination in access to work and whether it was considering legislation to combat discrimination against women in labour contracts. Also, what action were the authorities taking to eliminate the physical and other types of abuse to which many foreign domestic workers were subjected?

The meeting rose at 1 p.m.